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No. 85-1471

In the Supreme Court

of the

United States

OCTOBER TERM, 1985

BOREAL RIDGE CORPORATION
a California Corporation,
Petitioner,

vs.

SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE,
THE HONORABLE JOHN E. GABRIELLI,
AND GREG TIETJEN (Real Party in Interest),
Respondents.

REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE NEVADA SUPREME COURT

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PETITIONER'S REPLY TO OPPOSITION

Petitioner hereby submits this brief in reply to Respondent's Opposition to the Petition for a Writ of Certiorari.

JURISDICTION

Respondent's presented no objections to the jurisdiction of this Court.

STATEMENT OF THE CASE

Respondents have tried to link an isolated contact of BOREAL with respondent's cause of action. Upon examination, however, this is an incredible factual assumption.

Respondents state at Page 3 of their Brief, at Paragraph 10, that "Respondent TIETJEN has contended his cause of action arose out of BOREAL's transaction of business, in that he went to BOREAL's place of business, where he was injured, as a direct result of Petitioner's advertising the amusement facility in Nevada."

The only support for this statement in the record below comes from an affidavit by plaintiff, GREG TIETJEN, that states:

> That affiant is the plaintiff named in the above-entitled action. That affiant first became aware of the Alpine Slide operated by defendant BOREAL RIDGE, INC., when he heard an advertisement on Reno radio station KOZZ in June of 1981. That affiant had no knowledge of the operation of the Alpine Slide amusement ride prior to hearing the aforementioned advertisement on KOZZ radio."

Respondents have concluded that this cause of action arose out of BOREAL's transaction of business, by reasoning that TIETJEN went to BOREAL's place of business, where he was injured, as a direct result of Petitioner's advertising the amusement facility in Nevada. Yet the record below clearly shows the facts as otherwise. BOREAL admits the isolated instance of advertising on the radio for 7½ minutes over a three day period in June of 1981 *but this occurred over one year prior* to the alleged accident which occurred in August, 1982. To link the two events together is beyond belief.

The salient facts of this case are that BOREAL RIDGE CORPORATION has very little business from residents of Nevada and predominately draws its business from residents of the San Francisco Bay area and the Sacramento area, both in California and has had only random and occasional contacts in Nevada. Five isolated instances of advertising do not translate

into the continuous activity required to establish general *in personam* jurisdiction.

ARGUMENT

I

GENERAL JURISDICTION PRINCIPLES ARE APPLICABLE TO THIS CASE CONTRARY TO RESPONDENTS' ASSERTION OF SPECIFIC JURISDICTION

Petitioner BOREAL RIDGE CORPORATION still maintains that this case requires the application of "general jurisdiction" principles to BOREAL. The distinction between "general jurisdiction" and "specific jurisdiction" was shown at Footnote 8 and 9 to this Court's decision in *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984) ("Helicol"). If the suit does not arise out of the defendant's contacts with the forum, it is a case of "general jurisdiction" and if the suit arises out of the contacts with the forum, the matter is one of "specific jurisdiction".

Here, Respondent TIETJEN alleges personal injuries arising out of an accident on the Alpine Slide, a summertime amusement at BOREAL. Respondent has now tried to characterize this action for personal injuries as "arising out" of BOREAL's isolated conduct in advertising on radio station KOZZ for 7½ minutes over a three day period in June 1981, approximately one year and two months prior to the accident.

It stretches the imagination to see how this can be a case of specific jurisdiction under the circumstances. BOREAL maintains that, as a matter of law, the isolated radio advertisement *one year and two months prior to the accident* was not the cause of the accident. Since this action did not arise out of the defendant's contacts, this case should be judged by the application of general jurisdiction principles.

II

RESPONDENTS HAVE IGNORED THIS COURT'S HOLDING THAT PURCHASES OF EQUIPMENT AND SUPPLIES DO NOT SUPPORT AN ASSERTION OF GENERAL JURISDICTION

Respondents have ignored this Court's holding that occasional purchases of equipment and supplies are not the kinds of contacts which warrant or support an assertion of general jurisdiction. *Helicol,* supra, 466 U.S. at 418. This Court made clear that even if the purchases occurred at regular intervals, they are still not enough to warrant a state's assertion of *in personam* jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions. *Helicol,* supra.

III

ISOLATED OR RANDOM CONTACTS ARE INSUFFICIENT TO SUPPORT GENERAL *IN PERSONAM* JURISDICTION

Boreal has had only isolated or random contacts with the State of Nevada. In order for a Court to assert "general jurisdiction" over a defendant, the nature of the contacts with the forum state must be more than random, fortuitous, or attenuated contacts. *Burger King Corp. v. Rudzewicz,* 471 U.S. ____, 85 L.Ed.2d 528, at 542 and 543 (1985).

The record below indicates that BOREAL draws very little business from residents of the State of Nevada and predominately draws its business from residents of the San Francisco Bay area and the Sacramento area, both in California. Although BOREAL is located technically twenty miles from the Nevada State line, as the eagle flies across the Sierra Mountains, it is located within a few miles of being equidistance between the Auburn-Sacramento area and the Reno, Nevada area which are the two closest metropolitan areas.

Jurisdiction is not measured by miles. In this case, jurisdiction is determined by the contacts of the nonresident Corportion with the forum state. As shown so clearly in *Helicol,* the contacts

must be continuous and systematic. All of contacts of BOREAL with Nevada have only been random, fortuitous or attenuated.

CONCLUSION

Petitioner agrees with Respondents when they state that the question presented by BOREAL in its Petition for Writ of Certiorari has been amply addressed by this Court in the past and recently. However, the Nevada Supreme Court has decided this case involving general jurisdiction in direct conflict with this Court's decision in *Helicol.*

It is clear that BOREAL has not had contacts of a continuous and systematic nature with the State of Nevada so as to subject it to general *in personam* jurisdiction. Therefore, the Petition for Writ of Certiorari should be granted or in the alternative, this Court should grant the Writ and summarily reverse the decision of the Nevada Supreme Court or remand the matter to the Nevada Supreme Court as requested in the Petition by BOREAL.

Respectfully Submitted:

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Counsel for the Petitioner
Boreal Ridge Corporation

Dated: May 5, 1986